

Ellen Dowd, Esq.
 State Bar Number 141206
 2658 Del Mar Heights Road #228
 Del Mar, California 92014
 (858) 342-8360
 Fax (858) 755-6348
 ellendowd@sbcglobal.net

Attorney for Plaintiff, C.S.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

C.S., by and through his Conservator,)	CASE NO.: 08 CV 0226 W (AJB)
MARY STRUBLE, on behalf of himself)	DECLARATION OF ELLEN DOWD,
and all others similarly situated,)	ESQ. IN OPPOSITION TO MOTION
)	TO INTERVENE AND EX PARTE
)	MOTION TO SHORTEN TIME
Plaintiff,)	THEREFOR
v.)	Date: To Be Set
)	Time: To Be Set
CALIFORNIA DEPARTMENT OF)	Judge: Hon. Thomas J. Whelan
EDUCATION, a State Agency,)	
Defendant.)	

I, Ellen Dowd, declare as follows:

- I am an attorney admitted and in good standing in all of the state and federal Courts in the State of California, including this honorable court.
- I am attorney of record for Plaintiff herein, and make this declaration on behalf of Plaintiff, and all others similarly situated, meanings disabled students and their parents who have, through a special education due process hearing before OAH's ALJs, obtained less than complete relief sought, in opposition to OAH's application for intervention and ex parte motion to shorten time.

1 3. I have personal knowledge of the facts stated herein, and, if called as a
2 witness, I could and would testify competently thereto.

3 4. On August 1, 2007 I spoke to Perry Williams at the U.S. Department
4 of Education about my concerns about the conduct of Special Education Due
5 Process Hearings by OAH, ad the lack of oversight by CDE. Mr. Williams told me
6 at that time that the federal government does not have the financial resources to
7 audit CDE.

8 5. On January 26, 2008, I made a Public Records Act Request to OAH
9 seeking, among other things, "Request #2:

10 (1) Copies of any and all writings consisting of Board Decisions,
11 memorandum of understanding, request for bid/proposal, Interagency Agreement,
12 General Terms and Conditions, Duty Statements, solicitations, applications,
13 employment contracts received by OAH from CDE regarding the renewal of the
14 Interagency Agreement (currently number 4427) upon the expiration of the
15 Interagency Agreement on June 30, 2008.

16 (2) Copies of any and all writings consisting of letters, memorandum,
17 proposals, solicitations, requests, bids, proposals, applications, resumes, duty
18 statements, employment contracts sent by OAH to CDE regarding the renewal of
19 the Interagency Agreement (currently number 4427) upon the expiration of the
20 Interagency Agreement on June 30, 2008.

21 (3) Copies of any and all writings consisting of any internal
22 memorandum, correspondence, meeting notes, meeting agendas, sign in sheets,
23 proposals, recommendations, amendments, agreements, requests, communications
24 generated by OAH to OAH or anyone regarding the renewal of the Interagency
25 Agreement (currently number 4427) upon the expiration of the Interagency
26 Agreement on June 30, 2008." (Exhibit "1" hereto).

27 6. On February 21, 2008 OAH refused to provide documents responsive
28 to Request #2, on the grounds of attorney-client privilege, and "the public interest

1 served by not disclosing the records clearly outweighs the public interest served by
2 disclosure of the records.” (Exhibit “2” hereto).

3 7. OAH filed a motion to Intervene on March 7, 2008. Its interest in this
4 action is directly related to the documents withheld, and the withholding of these
5 documents impedes Plaintiff’s and the Court’s understanding of the current
6 relationship between CDE and OAH.

7 8. The Public Records Act is liberally construed in favor of disclosure.
8 However, since OAH is not a party to this action, and is not subject to discovery,
9 Plaintiff would be required to enforce its right to these public records in State
10 Court.

11 9. It is apparent from all of the records and Exhibits in this case, that
12 OAH’s and CDE’s interests thus far are identical; to wit: enter into the next
13 Interagency Agreement with OAH, at any and all costs, including defending this
14 lawsuit, and unlawfully depriving special education students of their federal rights.

15 10. Plaintiff’s counsel in October, 2006 sued CDE and OAH in
16 connection with a Due Process Hearing Decision that wasn’t correct, USDC,
17 SDCA Case No. 06 CV 2357 BEN (RBB). The docket of this case shows
18 aggressive motions to dismiss on grounds including 11th Amendment Immunity,
19 lack of third party beneficiary status and failure to exhaust remedies. Plaintiff
20 fully expects CDE to be equally aggressive in this action, and Plaintiff is therefore
21 seeking intervention, and or other action by the U.S. Department of Education.

22 11. Plaintiff respectfully requests that before any intervention by CDE is
23 permitted, Plaintiff have a full and fair opportunity to investigate and determine
24 whether, as it appears, CDE can adequately represent OAH’s interest in the
25 upcoming Interagency Agreement. It makes no sense to waste additional public
26 funds if CDE, as an original party, can represent OAH.

1 I declare under penalty of perjury under the laws of the United States of
2 America and the State of California that the foregoing is true and correct.

3 Executed this 10th day of March, 2008 at San Diego, California.

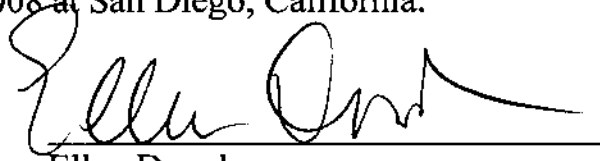
4 
5
6 Ellen Dowd

EXHIBIT “1”

**Ellen Dowd
Attorney At Law
State Bar # 141206
Special Education Legal Center
2658 Del Mar Heights Road #228
Del Mar, California 92014
(Tel) 858-342-8360 (Fax) 858-755-6348**

January 26, 2008

Phoenix R. Vigil
Public Records Review Officer
Office of Administrative Hearings
2349 Gateway Oaks Drive
Suite 200
Sacramento, California 92833-4321

VIA Fax # 916-263-0890
And U.S. Mail

Dear Ms. Vigil:

In accordance with Public Records Act, California Government Code §6250 et seq.
please provide me with the following documents:

Request # 1:

- (1) Copies of any and all rosters or lists or any written record of the names of the Special Education Division ALJs who were employed by OAH assigned to Southern California between January 1, 2007- March 31, 2007.
- (2) Copies of any and all rosters or lists or any written record of the names of the Special Education Division ALJs who were employed by OAH assigned to Southern California between April 1, 2007- June 30, 2007.
- (3) Copies of any and all rosters or lists or any written record of the names of the Special Education Division ALJs who were employed by OAH assigned to Southern California between July 1, 2007- September 30, 2007.
- (4) Copies of any and all rosters or lists or any written record of the names of the Special Education Division ALJs who were employed by OAH assigned to Southern California between October 1, 2007- December 31, 2007.
- (5) Copies of any and all rosters or lists or any written record of the names of the Special Education Division ALJs who were employed by OAH assigned to Southern California between January 1, 2008- March 31, 2008.

Request # 2:

- (1) Copies of any and all writings consisting of Board Decisions, memorandum of understanding, request for bid/proposal, Interagency Agreement, General Terms and Conditions, Duty Statements, solicitations, applications, employment contracts received by OAH from CDE

regarding the renewal of the Interagency Agreement (currently number 4427) upon the expiration of the Interagency Agreement on June 30, 2008.

(2) Copies of any and all writings consisting of letters, memorandum, proposals, solicitations, requests, bids, proposals, applications, resumes, duty statements, employment contracts sent by OAH to CDE regarding the renewal of the Interagency Agreement (currently number 4427) upon the expiration of the Interagency Agreement on June 30, 2008.

(3) Copies of any and all writings consisting of any internal memorandum, correspondence, meeting notes, meeting agendas, sign in sheets, proposals, recommendations, amendments, agreements, requests, communications generated by OAH to OAH or anyone regarding the renewal of the Interagency Agreement (currently number 4427) upon the expiration of the Interagency Agreement on June 30, 2008.

Request # 3:

(1) Copies of any and all writings consisting of price quotes for ALJ training for between January 1, 2008-June 30, 2008.

(2) Copies of any and all writings consisting of evidence of ALJ training from January 1, 2007-December 31, 2007, including sign in sheets, dates/times/duration of training sessions, training session topics, identities of the trainers, trainer resumes, agendas, printed training materials, bids, contracts, invoices for the trainings, and any post-training testing, quizzes, surveys or comments.

I have enclosed a check in the amount of \$30.00 to cover the cost of photocopying and mailing these documents. If the cost is more than \$30.00, I agree to be responsible for all additional charges.

Please send these to me within the statutory period. Thank for your anticipated cooperation.

Very truly yours,
COPY
Ellen Dowd

Encl.

EXHIBIT “2”



OFFICE OF ADMINISTRATIVE HEARINGS

State of California

2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833-4231
 General Jurisdiction – (916) 263-0550 phone / (916) 263-0554 fax
 Special Education – (916) 263-0880 phone / (916) 263-0890 fax
 www.oah.dgs.ca.gov

Department of General Services

February 21, 2008

Via facsimile transmission and U.S. Mail

Ellen Dowd
 Special Education Legal Center
 2658 Del Mark Heights Road, #228
 Del Mar, CA 92014
 Fax: 858-755-6348

Re: Public Records Act Request – 08-004

Dear Ms. Dowd:

Following up on our February 7, 2008, correspondence, with regard to your Request #1, the Office of Administrative Hearings (OAH) has identified two pages of records that appear to be responsive to this request.

With regard to your Request #2, OAH has identified documents that appear to be responsive to this request. However, we are exempting those records pursuant to the attorney-client privilege contained in Evidence Code section 954 and Government Code section 6254(k). In addition, these records are preliminary drafts not ordinarily retained in our ordinary course of business (Government Code section 6254(a)), and, pursuant to Government Code section 6255, the public interest served by not disclosing the records clearly outweighs the public interest served by disclosure of the records. Release of records relating to an agency's deliberative process during the negotiation process would have a chilling effect on what should be open and free dialogue without public scrutiny or judgment and will significantly impede or impact an agency's deliberative process and ability to effectively negotiate. It would inhibit the free and candid exchange of ideas necessary to the decision-making process.

With regard to your Request #3, OAH has identified 470 pages of records which appear to be responsive to this request; subject to the exemptions listed on our February 7, 2008 letter.

We will release a copy of these records to you upon payment of our copy charge in the amount of \$47.20 (472 pages x \$0.10); less your prepaid check for \$30.00, this leaves a balance owing of \$17.20. Please make your check payable to the Office of Administrative Hearings.

Regional Offices

Los Angeles
 320 West Fourth Street
 Suite 630
 Los Angeles, CA 90013
 (213) 576-7200
 Fax (213) 576-7244

Oakland
 1515 Clay Street
 Suite 206
 Oakland, CA 94612
 (510) 622-2722
 Fax (510) 622-2743

San Diego
 1350 Front Street
 Suite 6022
 San Diego, CA 92101
 (619) 525-4475
 Fax (619) 525-4419

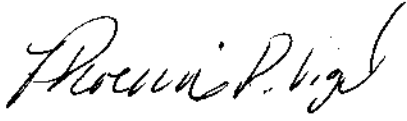
Laguna Hills
 23046 Avenida De La Carlota
 Suite 750
 Laguna Hills, CA 92653
 (949) 598-5850
 Fax (949) 598-5860

Van Nuys
 15350 Sherman Way
 Suite 300
 Van Nuys, CA 91406
 (818) 904-2383
 Fax (818) 904-2360

Ellen Dowd
February 21, 2008
Page 2

Release of public records is subject to case-by-case analysis. Release of these particular records in response to your request shall not be deemed a waiver of the State's right to assert any appropriate exemptions on similar categories of documents under other circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read "Phoenix R. Vigil". The signature is fluid and cursive, with the first name "Phoenix" being the most prominent part.

PHOENIX R. VIGIL
Public Records Review Officer
Office of Administrative Hearings